

South Australia

State Supply Act 1985

An Act regulating the supply operations of public authorities; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *State Supply Act 1985*.

4—Interpretation

In this Act, unless the contrary intention appears—

appointed member of the Board means a member of the Board appointed by the Governor under Part 2;

the Board means the board continued in existence under Part 2 under the name the State Supply Board;

chief executive officer, in relation to an authority, means the person appointed to, or acting in, the office or position (however named or described) of chief executive officer of the authority;

local government body means—

- (a) a council as defined in the *Local Government Act 1999*; or
- (c) any body whether corporate or unincorporate—
 - (i) established by a council or councils; or
 - (ii) declared by regulation to be a local government body;

prescribed public authority means a body whether corporate or unincorporate established for a public purpose and declared by regulation to be a prescribed public authority;

public authority means—

- (a) a department or other administrative unit of the public service or other instrumentality or agency of the Crown; or
- (b) a body corporate established for a public purpose and comprised of or including, or having a governing body comprised of or including, a Minister or Ministers of the Crown or a person or persons appointed by the Governor or a Minister or other instrumentality or agency of the Crown; or
- (c) any body whether corporate or unincorporate established for a public purpose and declared by regulation to be a public authority,

but does not include a prescribed public authority;

supply operations, in relation to an authority, means—

- (a) the procurement of goods or services required by the authority for its operations, including (without limitation) the procurement of—
 - (i) a supply of electricity, gas or any other form of energy; or
 - (ii) intellectual property; or

- (b) the management of goods of the authority, including (without limitation) the care, custody, storage, inspection, stocktaking or distribution of goods of the authority; or
 - (c) the management of the authority's contracts for services; or
 - (d) the disposal of goods surplus to the requirements of the authority,
- but does not include operations excluded from the ambit of this definition by regulation.

5—Act not to apply to certain bodies

This Act does not apply to or in relation to—

- (a) the Natural Gas Authority of South Australia; or
- (b) the Motor Accident Commission; or
- (d) The University of Adelaide; or
- (e) The Flinders University of South Australia; or
- (f) the University of South Australia; or
- (g) a local government body.

Part 2—The State Supply Board

6—Establishment of the Board

- (1) The *State Supply Board* is continued in existence.
- (2) The Board—
 - (a) continues to be a body corporate with perpetual succession and a common seal; and
 - (b) is capable of suing and being sued; and
 - (c) is capable of holding, acquiring, dealing with and disposing of real and personal property; and
 - (d) is capable of acquiring or incurring any other rights or liabilities; and
 - (e) is an agency of the Crown and holds its property on behalf of the Crown; and
 - (f) has the powers, duties, functions and responsibilities conferred or imposed by or under this Act or any other Act.
- (3) Where an apparently genuine document purports to bear the common seal of the Board, it is to be presumed in any legal proceedings, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to the document.

7—Constitution of the Board

- (1) The Board is to consist of—
 - (a) the chief executive of the administrative unit that has, subject to the Minister, responsibility for administering this Act or a nominee of the chief executive (who will chair the Board); and
 - (b) five other members appointed by the Governor.

- (2) Of the members appointed by the Governor—
 - (a) two must be members or officers of public authorities or prescribed public authorities; and
 - (b) one must be a person with knowledge and experience of private industry or commerce; and
 - (c) one must be a person with knowledge and experience of economic and industrial development; and
 - (d) one must be a person nominated by the United Trades and Labor Council.

8—Terms and conditions of office

- (1) An appointed member of the Board must be appointed for a period of two years upon such conditions as may be determined by the Governor, and, upon the expiration of his or her term of office, is eligible for reappointment.
- (2) The Governor may appoint a suitable person to be a deputy of a member of the Board and that person may, in the absence of that member, act as a member of the Board.
- (3) The Governor may remove an appointed member of the Board from office for—
 - (a) breach of, or non-compliance with, the conditions of his or her appointment; or
 - (b) mental or physical incapacity to carry out satisfactorily the duties of his or her office; or
 - (c) neglect of duty; or
 - (d) dishonourable conduct.
- (4) The office of an appointed member of the Board becomes vacant if—
 - (a) the member dies; or
 - (b) the member's term of office expires; or
 - (c) the member resigns by written notice addressed to the Minister; or
 - (d) the member is removed from office by the Governor pursuant to subsection (3).
- (5) Upon the office of an appointed member of the Board becoming vacant, a person must be appointed in accordance with this Act to the vacant office.

9—Meetings of the Board

- (1) The member appointed to chair the Board must chair the meetings of the Board at which he or she is present, and, in the absence of that member from a meeting, the members present must decide who is to chair the meeting.
- (2) Three members of the Board constitute a quorum of the Board, and no business may be transacted at a meeting unless a quorum is present.
- (3) A decision carried by a majority of the votes cast by the members present at a meeting is a decision of the Board.

- (4) Each member of the Board is entitled to one vote on a matter arising for decision by the Board, and the person presiding at the meeting has, in the event of an equality of votes, a second or casting vote.
- (5) The Board must cause accurate minutes to be kept of the business conducted at meetings of the Board.
- (6) Subject to this Act, the business of the Board may be conducted in a manner determined by the Board.

10—Validity of acts of the Board and immunity of members

- (1) An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.
- (2) No personal liability attaches to a member of the Board for an act or omission by that person or the Board in good faith in the exercise, performance or discharge, or purported exercise, performance or discharge, of powers, functions or duties under this Act.
- (3) A liability that would, but for subsection (2), lie against a member of the Board lies against the Crown.

11—Disclosure of interest

- (1) A member of the Board who is in any way directly or indirectly interested in a contract made by the Board, or a proposed contract in the contemplation of the Board—
 - (a) must, as soon as he or she becomes aware of the contract, or the proposal to make the contract, disclose the nature of his or her interest to the Board; and
 - (b) must not take part in any deliberations or decision of the Board with respect to that contract.
- (2) For the purposes of this section, a member of the Board who is a member or officer of a public authority or prescribed public authority is not to be regarded as having an interest in a contract or proposed contract by reason only of the fact that the contract or proposed contract may benefit or affect that authority.
- (3) A disclosure under this section must be recorded in the minutes of the Board.
- (4) Where a member makes a disclosure of interest in respect of a contract or proposed contract in accordance with this section—
 - (a) the contract is not void, or liable to be avoided, on any ground arising from the member's interest in the contract; and
 - (b) the member is not liable to account to the Board for any profits derived from the contract.

12—Allowances and expenses

A member of the Board is, if the Governor thinks fit, entitled to such allowances and expenses as may be determined by the Governor.

Part 3—Functions of the Board

13—Functions of the Board

- (1) The functions of the Board are—
 - (a) to undertake, make arrangements for or control the supply operations of public authorities;
 - (b) to develop and issue policies, principles and guidelines, and give directions, relating to the supply operations of public authorities;
 - (c) to investigate and keep under review the supply operations of public authorities;
 - (d) to provide advice relating to the supply operations of public authorities, including the training and development of persons engaged in supply operations.
- (2) For the purpose of performing its functions the Board may—
 - (a) acquire, hold, deal with and dispose of real and personal property; and
 - (b) enter into any kind of contract or arrangement; and
 - (c) acquire or incur any other rights or liabilities; and
 - (d) direct a public authority to furnish to the Board documents or information relating to the operations of the authority; and
 - (e) exercise such other powers as are vested in it under this Act or are necessary for, or incidental to, the effective performance of its functions.

14—Public authorities bound by directions etc of the Board

A public authority (including every member or officer of the authority) is bound to comply with any directions given or policies, principles or guidelines issued to the authority by the Board in the performance of its functions.

14A—Responsibility of chief executive officers in relation to supply operations

The chief executive officer of a public authority is responsible for the efficient and cost effective management of the supply operations of the authority subject to and in accordance with the policies, principles, guidelines and directions of the Board.

15—The Board and prescribed public authorities

- (1) The Board may, if it thinks fit, provide advice or make recommendations to the Minister responsible for a prescribed public authority upon any matter relating to the supply operations of the authority.
- (2) A prescribed public authority (including every member or officer of the authority) is bound to comply with any directions given by the Minister responsible for the authority upon the advice or recommendation of the Board.

16—Undertaking or arranging supply operations for prescribed public authorities and other bodies

The Board may, if it thinks fit—

- (a) with the approval of the Minister responsible for a prescribed public authority, undertake or make arrangements for supply operations for the authority; or
- (b) with the approval of the Minister, undertake or make arrangements for supply operations for a body other than a public authority or prescribed public authority.

17—The Board and government policy

- (1) The Minister may require the Board to have regard to a particular policy, principle or matter in the exercise of its powers and performance of its functions under this Act.
- (2) Any requirement of the Minister under subsection (1) must be addressed to the Board in writing.
- (3) Except as provided by this Act, the Board is not subject to ministerial control or direction.

Part 4—Miscellaneous

18—Staff

- (1) The Board is to be provided with such staff (comprised of persons employed in the public service of the State) as is necessary for the purposes of the Act.
- (2) The Board may, with the approval of the Minister administering any administrative unit of the public service, upon terms and conditions mutually arranged, make use of the services of persons employed in that administrative unit.
- (3) The Board may, with the approval of a public authority (being a body corporate), upon terms and conditions mutually arranged, make use of the services of an officer of that authority.

19—Delegation

- (1) The Board may delegate any of its powers or functions to a member of the Board or an officer engaged in the administration of this Act.
- (2) A delegation under subsection (1)—
 - (a) may be made subject to conditions specified in the instrument of delegation; and
 - (b) is revocable at will; and
 - (c) does not derogate from the power of the Board to act itself in any matter.

20—Financial provision

The money required for the purposes of this Act may be paid out of money appropriated by Parliament for the purpose.

21—Accounts and audit

- (1) The Board must cause proper accounts to be kept of its financial affairs.
- (2) The accounts of the Board must be audited at least once in every year by the Auditor-General.

22—Annual report

- (1) The Board must, on or before 30 September in each year, deliver to the Minister a report upon the administration of this Act during the preceding financial year.
- (2) The report must contain the audited statement of accounts of the Board for the financial year to which the report relates.
- (3) The Minister must cause a copy of the report to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report.

24—Regulations

The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Repeal of Act

The *State Supply Act 1985* was repealed by Sch 1 cl 3 of the *State Procurement Act 2004* on 4.10.2005.

Legislation repealed by principal Act

The *State Supply Act 1985* repealed the following:

Public Supply and Tender Act 1914

Principal Act and amendments

Year	No	Title	Assent	Commencement
1985	58	<i>State Supply Act 1985</i>	30.5.1985	30.9.1985 (<i>Gazette 26.9.1985 p944</i>)
1986	54	<i>State Supply Act Amendment Act 1986</i>	2.10.1986	2.10.1986
1991	27	<i>State Supply (Miscellaneous) Amendment Act 1991</i>	18.4.1991	17.6.1991 (<i>Gazette 13.6.1991 p1864</i>)
1994	17	<i>State Bank (Corporatisation) Act 1994</i>	12.5.1994	Sch 4—1.7.1994 (<i>Gazette 23.6.1994 p1784</i>)
2001	68	<i>State Supply (Miscellaneous) Amendment Act 2001</i>	6.12.2001	15.1.2002 (<i>Gazette 15.1.2002 p188</i>)

Provisions amended

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended by 27/1991 Sch substituted by 68/2001 s 3	17.6.1991 15.1.2002
Pt 1		
<i>ss 2 and 3</i>	<i>deleted by 27/1991 Sch</i>	<i>17.6.1991</i>
s 4		
chief executive officer	inserted by 27/1991 s 3(a)	17.6.1991

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<i>goods</i>	<i>deleted by 68/2001 s 4(a)</i>	15.1.2002
local government body	amended by 68/2001 s 4(b)	15.1.2002
	(b) deleted by 68/2001 s 4(c)	15.1.2002
<i>management</i>	<i>deleted by 68/2001 s 4(d)</i>	15.1.2002
public authority	amended by 27/1991 Sch	17.6.1991
<i>the repealed Act</i>	<i>deleted by 27/1991 Sch</i>	17.6.1991
supply operations	inserted by 27/1991 s 3(b)	17.6.1991
	substituted by 68/2001 s 4(e)	15.1.2002
s 5	substituted by 54/1986 s 2	2.10.1986
	amended by 27/1991 Sch	17.6.1991
	amended by 17/1994 Sch 4 cl 9	1.7.1994
	amended by 68/2001 s 5	15.1.2002
Pt 2		
s 5	(h)—(j) deleted by 27/1991 Sch	17.6.1991
	(c) deleted by 68/2001 s 5	15.1.2002
s 6		
s 6(1)	substituted by 27/1991 Sch	17.6.1991
s 6(2) and (3)	amended by 27/1991 Sch	17.6.1991
s 6(4)	<i>deleted by 27/1991 Sch</i>	17.6.1991
s 7	substituted by 27/1991 s 4	17.6.1991
s 7(1)	amended by 68/2001 s 6	15.1.2002
s 8		
s 8(1), (3)—(5)	amended by 27/1991 Sch	17.6.1991
s 9		
s 9(1)	substituted by 27/1991 s 5	17.6.1991
s 9(2)—(6)	amended by 27/1991 Sch	17.6.1991
s 10	amended by 27/1991 Sch	17.6.1991
s 11		
s 11(1)—(3)	amended by 27/1991 Sch	17.6.1991
s 12	amended by 27/1991 Sch	17.6.1991
Pt 3		
s 13		
s 13(1)	substituted by 68/2001 s 7	15.1.2002
s 14A	inserted by 27/1991 s 6	17.6.1991
s 14B	<i>inserted by 27/1991 s 6</i>	17.6.1991
	<i>deleted by 68/2001 s 8</i>	15.1.2002
s 15		
s 15(1)	amended by 27/1991 s 7	17.6.1991
s 16	amended by 54/1986 s 3	2.10.1986
	amended by 68/2001 s 9	15.1.2002
s 17		
s 17(2)	amended by 27/1991 Sch	17.6.1991

Pt 4

s 18		
s 18(1) and (2)	substituted by 27/1991 Sch	17.6.1991
s 20	amended by 27/1991 Sch	17.6.1991
s 21		
s 21(1) and (2)	amended by 27/1991 Sch	17.6.1991
s 21(3)	<i>deleted by 27/1991 Sch</i>	<i>17.6.1991</i>
s 22	amended by 27/1991 Sch	17.6.1991
s 23	<i>amended by 27/1991 s 8, Sch</i>	<i>17.6.1991</i>
	<i>deleted by 68/2001 s 10</i>	<i>15.1.2002</i>

Historical versions

Reprint No 1—1.7.1994